FOURTH DIVISION
January 31, 2013

No. 1-12-0547

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BROMPTON BUILDING, LLC,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
v.	)	No. 2011 L 013705
	)	
YELP!, INC.,	)	Honorable
	)	Kathy M. Flanagan,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in dismissing a verified petition for discovery before suit filed by a residential building owner seeking the identity of a person who anonymously posted a negative online review. The court did not err in finding that the posting did not "meet the criteria of defamatory material" where the challenged statements constituted opinion, not fact, and where the statements primarily were directed at the building owner's former managing agent. The appellate court lacks jurisdiction to consider the tortious interference with the prospective economic advantage count of the verified petition where the building owner's notice of appeal referenced only the disposition of its defamation claim.

¶ 2 Plaintiff Brompton Building, LLC (Brompton) filed a verified petition for discovery before suit against defendant Yelp!, Inc. (Yelp) pursuant to Illinois Supreme Court Rule 224. Ill.

S. Ct. R. 224 (eff. May 30, 2008). In the petition, Brompton sought discovery regarding the identity of an anonymous poster, "Diana Z. Chicago, IL" (Diana Z.), on Yelp's website. Brompton alleged in the petition that Diana Z. defamed Brompton and tortiously interfered with Brompton's prospective economic advantage. The trial court dismissed the petition, and Brompton appealed. For the reasons stated herein, we affirm the trial court's dismissal of Brompton's petition.

¶ 3 BACKGROUND

¶ 4 Brompton owns a residential apartment building in Chicago, Illinois and leases the apartments to tenants. Beal Properties, LLC (Beal) is the former managing agent of Brompton.

¶ 5 Yelp's website provides information, including reviews posted by Yelp members, regarding certain local businesses. According to Brompton's petition, after a membership applicant obtains an account with Yelp, the member "has access to portions of the Yelp! website where the Member can write reviews regarding local businesses, which are then published on the Yelp! website."

¶ 6 On December 21, 2011, Brompton filed its petition seeking discovery before suit pursuant to Rule 224 regarding the identity of an anonymous internet poster on Yelp's website. On or about May 12, 2011, "Diana Z., Chicago, IL," a Yelp member, gave a review of one out of five stars and posted as follows:

> I personally created a Yelp account just to rate Beal Properties. Does Yelp have negative stars? Someone, please look into this.
>
> On May 6th, 2011 I was issued a card in the mail that claimed my rent was late. I paid

my rent prior to the first, however Beal claimed that they did not receive my check until the 6th (after the 5th they issue a late fee). This is a TOTAL lie!!!

I called Beal yesterday, and the woman on the phone was one of the rudest individuals that I have ever spoken to in my entire life! I purposely used my, "Hi, Im [*sic*] really sweet and soft spoken" voice to ensure that I don't [*sic*] immediately spew my anger onto this woman in a murderous rage. I told the woman that I had mailed my rent so that it would arrive on time/early. I was never late, and the proof I had to back this up was a carbon copy of my check and asked her to check out the post mark on my rent envelope. I understand that this is not legal 'proof' that my rent was actually received before the 5th, but nevertheless, if my rent was somehow lost in the mail for 9+ days, they would understand and cut me a break.

Instead of being level-headed, this woman kept remarking "CLEARLY YOU ARE NOT COMPREHENDING WHAT I AM SAYING. IT DOES NOT MATTER WHEN IT WAS SENT." The only thing I didnt [*sic*] understand was how she could be such a **** when I was talking to her in my sweet old lady voice. NOBODY talks to me like that when I use my old lady voice. NOBODY!!! I then asked the lady what proof she had that my check wasn't somehow lost in their office and magically found after the deadline? Absolutely none. She hung up.

Another example of their total incompetence was the time I called them to ask for maintenance for my kitchen sink that was not working. I moved into an apartment had [*sic*] almost no water pressure, and the water wouldnt [*sic*] drain down the sink. I asked

them to write in my lease that these issues would be fixed prior to me moving in. The landlord (who is extremely nice, but aloof) attempted to fix it three times 4 weeks after I moved in. Each time he did not even run the water to see if the water was now able to drain. On the third instance he actually spilled the stagnant water from my sink (from the wet vac he used) onto the floor in my apartment and then dropped his phone in it. After calling Beal to see if they could prompt him to call someone, I asked them to verify my rights as a tenant 'If this problem isnt [*sic*] addressed within 14 days am I able to call someone to get this fixed myself?' and they told me that it wasnt [*sic*] their problem and then hung up on me. I was soo [*sic*] naive.

After reading several Yelp reviews, its [*sic*] clear that Beal Properties is illegally charging tenants late fees for their rent. As a prior reviewer claimed, YOU MUST TRACK ALL DOCUMENTS SENT TO BEAL!! I guess I will have to certify all my rent checks to them!! Is there any way that we can find out if other Beal tenants (for me: Brompton Building LLC) have also been illegally charged late rent fees? We may have a voice in numbers–especially complaining to the BBB.

Lastly, my interaction with Beal has made me a better person in the following ways:

I actually enjoy talking with my HR department.

I look forward to moving to a worse neighborhood.

I feel as if I personally contributed to the profits seen my local grocery stores [*sic*] alcohol department.

The thought of Beal or Brompton Building, LLC makes me want to run a [*sic*] five

marathons.

Contracting herpes doesn't seem as horrible."

¶ 7 Brompton states that this posting "incorrectly refers to Beal as the managing agent of the Property. However, Beal was the *former* managing agent of the Property." (Emphasis in original). Brompton further notes that "[a]t the time that [Diana Z.] alleges that she was illegally charged a late rent fee, Brompton Building was managing the Property, not Beal."

¶ 8 Brompton's petition included two counts against Diana Z.: defamation and tortious interference with prospective economic advantage. In the defamation count, Brompton contended that Diana Z.'s posting "accuses Brompton Building of lying, and alleges that Brompton Building commits crimes and deceptive practices in the operation of its business." Brompton denied lying regarding the timing of its receipt of rent checks or illegally charging its tenants late fees. Brompton also alleged that the "false and defamatory statements" in Diana Z.'s posting "damaged, and continues to damage, Brompton Building's integrity, and prejudices Brompton Building in the operation of its business."

¶ 9 In its tortious interference with prospective economic advantage count, Brompton alleged, upon information and belief, that Diana Z. "was aware that Brompton Building had contractual relationships with tenants, and potential new relationships with such tenants and prospective tenants to enter into leases with." Brompton contended that Diana Z. "maliciously interfered with Brompton Building's expectancy to renew leases with current tenants and to enter into leases with new tenants by posting false and defamatory statements about Brompton Building."

¶ 10 Brompton sought limited discovery on Yelp pursuant to Rule 224 to obtain the name and

address, or information that could lead to the name and address, of Yelp member Diana Z., "a person who may be responsible for damages to Brompton Building." Yelp did not file an answer or otherwise appear in the trial court.[1] The trial court found that pursuant to the holding in *Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386, the posting published by Diana Z. on Yelp's website "does not meet the criteria of defamatory material." The court dismissed Brompton's petition for discovery before suit. Brompton filed this appeal.

¶ 11 ANALYSIS

¶ 12 Brompton contends that the trial court erred in dismissing its petition for discovery based on *Stone v. Paddock Publications, Inc.*, 2011 IL App (1st) 093386. Specifically, Brompton argues that the statements contained in Diana Z.'s posting "adequately support a cause of action for defamation" and are distinguishable from the statements at issue in *Stone*. Brompton further contends that it adequately pleaded a cause of action for tortious interference with prospective economic advantage against Diana Z.

¶ 13 Rule 224 provides, in part, "[a] person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery." Ill. S. Ct. R. 224. The rule provides "significant" protections to "any anonymous individual from any improper inquiry into his or her identity":

> "First, the petition must be verified. Second, the petition must state the reason the proposed discovery is necessary. Third, the discovery is limited to the identity of one

[1]Yelp did not file a responsive brief in this court within the prescribed time. Pursuant to prior order, this case has been taken for consideration on the record and Brompton's brief only.

> who may be responsible in damages to the petitioner. Fourth, and most importantly, the trial court must hold a hearing at which it must determine that the unidentified person is 'one who may be responsible in damages' to the petitioner." *Maxon v. Ottawa Publishing Company*, 402 Ill. App. 3d 704, 711 (2010).

In this case, Brompton's petition was verified and stated the reason the proposed discovery was necessary. The requested discovery was limited to the name and address of "Diana Z., Chicago, IL," and the trial court appears to have held a hearing in accordance with Rule 224. The sole issue is whether Diana Z. is "one who may be responsible in damages" to Brompton for defamation.[2]

¶ 14 An appellate court generally reviews a trial court's ruling on a Rule 224 petition under an abuse of discretion standard. *Maxon*, 402 Ill. App. 3d at 709. However, our review is *de novo* where, as here, the trial court's exercise of discretion relies upon a conclusion of law, *i.e.,* that Diana Z.'s posting does not meet the "criteria of defamatory material." See *id.* at 710; *Stone*, 2011 IL App (1st) 093386.

¶ 15 *Stone v. Paddock Publications, Inc.*

¶ 16 In *Stone*, two individuals–one of whom was later identified as a minor–posted "various sarcastic comments" about a local election under anonymous screen names on a suburban newspaper's comment board. *Stone*, 2011 IL App (1st) 093386, ¶ 1. The minor's mother, a candidate in the election, filed a petition pursuant to Rule 224 on her son's behalf, seeking

[2]As discussed further herein, this court lacks jurisdiction to consider Brompton's cause of action for tortious interference with prospective economic advantage.

discovery of the identity of the other commenter (John Doe) due to his comments, which allegedly defamed her son. *Id.* The trial court ultimately ordered that the identity of the subscriber to the internet protocol (IP) address used by Doe when posting on the website would be revealed to the petitioner. *Id.* Doe appealed, contending that the trial court applied an improper standard in determining whether the petitioner was entitled to discover his identity and by granting the petitioner relief where his comments did not constitute defamation.[3] *Id.*

¶ 17 The appellate court held that "requiring a Rule 224 petitioner to provide allegations sufficient to overcome a section 2-615 motion to dismiss adequately balances the rights of a petitioner and the unidentified individual." *Id.* at ¶ 18 (citing *Maxon v. Ottawa Publishing Co.*, 402 Ill. App. 3d 704 (2010)). The court rejected the use of a summary judgment standard, noting that if such standard "were to be applied strictly to Rule 224 petitions, petitioners seeking redress for even meritorious claims may be denied relief because they lack evidence that they have no means to obtain until discovery ensues." *Id.* at ¶ 20.

¶ 18 The appellate court then considered whether the petitioner could establish a cause of action for defamation. *Id.* at ¶ 23. To state a claim for defamation, a plaintiff "must present facts demonstrating that the defendant made a false statement about the plaintiff, that the plaintiff made an unprivileged publication of the subject statement to a third party, and that the publication caused damages" to the plaintiff. *Id.* at ¶ 24 (citing *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009)). A statement is defamatory if it harms a person's reputation to the extent it lowers

[3]Doe also argued that the challenged comments were immunized by the Citizen Participation Act, 735 ILCS 110/1 (West 2008). *Id.*

the person in the eyes of the community or deters the community from associating with him. *Id.* There are two forms of defamation: defamation *per se* and defamation *per quod. Id*.

¶ 19 A statement is defamation *per se* if its defamatory character is obvious and apparent on its face and injury to the plaintiff's reputation may be presumed. *Id.* at 25. The *Stone* court observed that there are five categories of statements that are deemed to be defamation *per se*: (1) words that impute the commission of a criminal offense; (2) words that impute infection with a loathsome communicable disease; (3) words that impute an individual is unable to perform his employment duties or otherwise lacks integrity in performing those duties; (4) words that prejudice an individual in his profession or otherwise impute a lack of ability in his profession; and (5) words that impute an individual has engaged in fornication or adultery. *Id.* at ¶ 25 (citing *Tuite v. Corbitt*, 224 Ill. 2d 490, 501 (2006)). In *Stone*, the petitioner's son's comments included:

> "[S]how yourself in person. With all your resources I'm sure you could navigate your way over to the Stone confines. Then I'll be glad to have this conversation with you, however, I will not continue to comments on these blogs where anyone can be anyone." *Id.* at ¶ 5.

Doe responded the following day; his comments included:

> "Thanks for the invitation to visit you.. but [*sic*] I'll have to decline. Seems like you're very willing to invite a man you know from the internet over to your house – have you done it before, or do they usually invite you to their house?" *Id.* at ¶ 6.

The petitioner argued that the challenged statement suggested her son "solicits men for sex" and thus falls into the first and last categories of defamation *per se*. *Id.* at ¶ 25.

¶ 20 The *Stone* court noted that our supreme court has recognized that there are three types of actions in which an allegedly defamatory statement has been held to be protected by the first amendment in the absence of a showing that the statement is factual: (1) actions brought by public officials; (2) actions brought by public figures; and (3) actions brought against media defendants by private individuals. *Id.* at ¶ 26 (citing *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.,* 227 Ill. 2d 381, 398-99 (2008)). In those circumstances, "the first amendment prohibits actions for defamation based on loose and figurative language that no person would reasonably believe presented a fact." *Id*. In determining whether a statement is protected by the first amendment from defamation claims, the test is whether the statement can be reasonably interpreted as stating a fact, considering "(1) whether the statement has a readily understood and precise meaning; (2) whether the statement can be verified; and (3) whether its social or literary context signals that it has factual content." *Id.* The court observed that the statement is evaluated from an ordinary reader's perspective. *Id.*

¶ 21 The *Stone* court noted that our supreme court in *Imperial Apparel* observed that it remains unsettled whether this first amendment privilege extends to statements made by one private individual about another regarding a private concern. *Id.* at ¶ 27 (citing *Imperial Apparel*, 227 Ill. 2d at 399). Although the supreme court did not resolve the matter, it noted the benefits of extending this privilege to private individuals, such as achieving consistent outcomes regardless of the status of the speaker or the subject of the speech. *Imperial Apparel*, 227 Ill. 2d at 400. The *Stone* court stated that it was "persuaded by the policies set forth by the supreme court that this requirement"–that a challenged statement must assert a fact in order to support a

defamation claim–"should not be limited by the status of the speaker or the person being spoken about." *Stone*, 2011 IL App (1st) 093386 at ¶ 28.

¶ 22 The *Stone* court then analyzed the challenged statement about the petitioner's son, finding that "no reasonable person would find that the challenged statement presented a *fact* regarding Jed, let alone a factual assertion that Jed, a minor, solicits men for sex over the Internet." *Id.* at ¶ 29. (Emphasis in original.) Even assuming the challenged comment had made a factual assertion, a statement will not be actionable *per se* if it "can easily and reasonably be subject to an innocent construction." *Id.* at ¶ 30 (citing *Green,* 234 Ill. 2d at 500). The court concluded that Doe's comment was entitled to an innocent construction, disagreeing with the petitioner that the comment had an inherent sexual connotation. *Id.* at ¶ 31. The court further noted that even if there were a sexual connotation, Doe's comment "may represent nothing more than an admonition that Jed's conduct in inviting Doe to meet in person was unwise." *Id.*

¶ 23 The court concluded that the petitioner failed to allege facts sufficient to support a cause of action for defamation, as required by section 2-615 of the Code, in order to demonstrate the necessity of discovering Doe's identity. *Id.* at ¶ 33. The court thus reversed the trial court's orders permitting Doe's identity to be turned over to the petitioner. In so holding, the *Stone* court expressed concern about "[e]ncouraging those easily offended by online commentary to sue to find the name of their 'tormentors,' " which would lead to unnecessary litigation and would "have a chilling effect on the many citizens who choose to post anonymously on the countless comment boards for newspapers, magazines, websites and other information portals." *Id.* at ¶ 31.

¶ 24 Brompton's Defamation Claim

¶ 25 Brompton contends that the statements in Diana Z.'s posting fall into three of the five categories of defamation *per se*: (1) words which impute a criminal offense; (2) words that impute an inability to perform or want of integrity in the discharge of duties of office or employment; and (3) words that prejudice a party, or impute a lack of ability, in his or her trade, profession or business. Brompton does not appear to allege defamation *per quod.*

¶ 26 Brompton argues that Diana Z.'s comments are "clearly distinguishable" from the statements at issue in *Stone*. First, Brompton contends that Diana Z.'s comments "asserted specific facts purporting to be true statements about the operation of Brompton Building's business, not a question posed to Brompton Building as in *Stone*." Second, Brompton contends that "it is impossible to innocently construe the statements made in the Diana Z. Posting."

¶ 27 There are two key comments by Diana Z. at issue in this case: comments regarding the timing of the receipt of her rent check and comments regarding the illegal charge of late fees. Diana Z. wrote the following about the timing of receipt of her rent check:

> "On May 6th, 2011 I was issued a card in the mail that claimed my rent was late. I paid my rent prior to the first, however Beal claimed that they did not receive my check until the 6th (after the 5th they issue a late fee). This is a TOTAL lie!!!"

Brompton also contends that Diana Z. accused Brompton of committing crimes and deceptive practices in the operation of its business by "illegally charging" tenants late fees for their rent. The relevant paragraph in the posting is as follows:

> "After reading several Yelp reviews, its [*sic*] clear that Beal Properties is illegally charging tenants late fees for their rent. As a prior reviewer claimed, YOU MUST

TRACK ALL DOCUMENTS SENT TO BEAL!! I guess I will have to certify all my rent checks to them!! Is there any way that we can find out if other Beal tenants (for me: Brompton Building LLC) have also been illegally charged late rent fees? We may have a voice in numbers -- especially complaining to the BBB."

¶ 28 Upon initial review, Diana Z.'s statements appear to satisfy those criteria cited by the *Stone* court regarding whether a statement can be reasonably interpreted as stating a fact, including (1) whether the statement has a readily understood and precise meaning; (2) whether the statement can be verified; and (3) whether its social or literary context signals that it has factual content. The statements that "this is a total lie" and reference to "illegally charging tenants late fees" have readily understood and precise meanings and are capable of verification. Furthermore, although Diana Z. certainly engaged in rhetorical hyperbole, the social and literary context of her statements–a review on a website where people search for information regarding local businesses–appears to signal factual content.

¶ 29 However, when Diana Z.'s posting is reviewed in its entirety, the challenged comments appear to be in the nature of opinions, not statements of fact. "The context of the defamatory statements is critical in determining its meaning." *Missner v. Clifford*, 393 Ill. App. 3d 751, 766 (2009), citing *Tuite v. Corbitt*, 224 Ill. 2d 490, 512 (2006). In determining the context of the defamatory statements, "we must read the writing containing the defamatory statement 'as a whole.' [Citation.]" *Id.*

¶ 30 For example, after her statement that Beal's claim that it did not receive her rent check until May 6th was a "TOTAL lie," Diana Z. stated that she called Beal and asked for confirmation

of the date of the post mark on her rent check envelope. Diana Z. continued, "I understand that this is not legal 'proof' that my rent was actually received before the 5th, but nevertheless, if my rent was somehow lost in the mail for 9+ days, they would understand and cut me a break." In this latter statement, Diana Z. expressly acknowledged the possibility that her rent check had been received late. Viewed in the context of the entire posting, Diana Z.'s statement that "This is a TOTAL lie!!!" represents her opinion, not a statement of fact.

¶ 31 Similarly, Diana's comments regarding the allegedly illegal charging of late fees are more in the nature of conclusory speculation than factual statements. The paragraph regarding the "illegal" late fee charges begins with "[a]fter reading several Yelp reviews." Diana Z.'s subsequent statements about Beal illegally charging late fees represent her opinion based on her experience regarding her May, 2011 payment–discussed above–and her reading of other Yelp reviews. The second sentence in this paragraph again cites the claim of a "prior reviewer." The penultimate sentence of this paragraph asks about "other" Beal tenants having "also been illegally charged late rent fees." This is a reiteration of Diana Z.'s previously expressed opinion. We also note that the statement is in the form of a question–again, not a statement of fact.

¶ 32 Reviewing Diana Z.'s posting as a whole, we conclude that the challenged statements do not present facts, but instead constitute non-actionable opinion. Thus we need not engage in the "innocent construction" analysis conducted by the *Stone* court. *Stone*, 2011 IL App (1st) at ¶ 30-31.

¶ 33 Even assuming *arguendo* that Diana Z. made defamatory comments that were not susceptible to an innocent construction, such comments were not made about Brompton, the

plaintiff in this action. Although at the time of the posting Brompton, not Beal, was managing the property,[4] there are extremely limited references to Brompton throughout the posting, and those references are not defamatory. A statement "will receive first amendment protection from defamation suits if it cannot be reasonably interpreted as stating actual facts *about the plaintiff*." *Maag v. Illinois Coalition for Jobs, Growth and Prosperity*, 368 Ill. App.3d 844, 851 (2006) (emphasis added); see also *Missner*, 393 Ill. App. 3d at 766 (noting that "[i]f the statement may reasonably be interpreted as referring to someone other than the plaintiff, it cannot be actionable *per se*" [Citation.]).

¶ 34 Diana Z. stated that she created her Yelp account "just to rate Beal Properties." "Alleged defamatory statements about third parties, rather than the plaintiffs, do not satisfy the requirement that the plaintiff be identified." 53 C.J.S. Libel and Slander; Injurious Falsehood § 35. While the posting refers to Beal extensively, there are only two express references to Brompton. The first is in the question quoted above: "Is there any way we can find out if other Beal tenants (for me: Brompton Building LLC) have also been illegally charged late rent fees?" The second is near the end of the posting: "The thought of Beal or Brompton Building, LLC makes me want to run a [*sic*] five marathons." The first reference to Brompton is simply a reference to the building in which Diana Z. resided at the time of the posting. The second statement–regarding "running five marathons"–presumably is a hyperbolically expressed opinion rather than a statement of literal fact. Reviewing Diana Z.'s posting in its entirety, we conclude

[4]Brompton notes on appeal that Diana Z.'s posting "incorrectly refers to Beal as the managing agent of the Property."

that the statements in Diana Z.'s posting do not represent *per se* defamation of Brompton.

¶ 35 Unlike the plaintiffs in the cases cited by Brompton–*Kolegas v. Heftel Broadcasting Corp.*, 154 Ill. 2d 1 (1992) and *Kumaran v. Brotman*, 247 Ill. App. 3d 216 (1993)–Brompton was not the subject of the allegedly defamatory comments. We recognize that, under Illinois law, a publication may defame an individual even without mentioning him by name "so long as it appears that some third party reasonably understood the writing to have referred to that individual." *Beresky v. Teschner*, 64 Ill. App. 3d 848, 851 (1978). In this case, while Brompton is referenced in Diana Z.'s posting, the allegedly defamatory statements may not be reasonably read to refer to Brompton, as opposed to Beal.

¶ 36 We conclude that the trial court did not err in finding that, pursuant to the holding in *Stone v. Paddock Publications, Inc.*, the posting published by Diana Z. on Yelp's website "does not meet the criteria of defamatory material." We agree with the principles espoused by the *Stone* court, and we similarly conclude that the Rule 224 petition should have been denied.

¶ 37 Tortious Interference With Prospective Economic Advantage

¶ 38 Brompton's verified petition for pre-suit discovery pursuant to Rule 224 included two counts: defamation and tortious interference with prospective economic advantage (tortious interference). As noted by the *Stone* court, nothing in Rule 224 limits its application to defamation claims. 2011 IL App (1st) 093386 at ¶ 14 ("Rule 224 applies not only to petitioner's potential defamation claim, but to any instance in which an unknown individual may be liable under any cause of action").

¶ 39 A threshold question, however, is whether this court has jurisdiction to review

Brompton's tortious interference claim. For the reasons stated herein, we conclude that Brompton failed to properly preserve its appeal with respect to its tortious interference claim and thus this court lacks jurisdiction to consider this issue.

¶ 40 Brompton's petition, the order and notice of appeal

¶ 41 In the tortious interference count included in the petition, Brompton contended, among other things, that it "has been damaged, and continues to be damaged in the form of lost profits, resulting from current tenants not renewing their leases, and prospective tenants deciding not to enter into new leases with Brompton Building, as a result of the Diana Z. Posting."

¶ 42 A "legal memorandum" was appended as an exhibit to the petition and incorporated by reference therein. Brompton stated that the memorandum "set[] forth the elements necessary to sufficiently plead a defamation claim and to establish that this Court has personal jurisdiction over Yelp!" The legal memorandum did not address the tortious interference count.

¶ 43 In its order dated January 25, 2012, the trial court stated:

> "The Court finds that pursuant to the holding in Stone v. Paddock Publications, Inc. the posting published by 'Diana Z. Chicago, IL' on May 12, 2011 does not meet the criteria of defamatory material. Pursuant to court order, Brompton Building, LLC's Verified Petition for Discovery Before Suit is dismissed."

The order does not reference the tortious interference count, and nothing in the record indicates the extent to which such count was addressed, if at all, during the hearing on the petition. However, the order dismissed the petition in its entirety including the tortious interference count.

¶ 44 The notice of appeal filed by Brompton on February 22, 2012 provides that the "[d]ate of

the judgment/order being appealed" is January 25, 2012, and further states that the following relief is sought from this court:

> "Reversal of the Trial Court's ruling that pursuant to the holding in Stone v. Paddock Publications, Inc., the posting published by 'Diana Z. Chicago, IL' on May 12, 2011 does not meet the criteria of defamatory material."

The relief sought in the notice of appeal only references the trial court's ruling regarding the defamation count. There is no reference to the tortious interference count or, more generically, the dismissal of Brompton's petition for pre-suit discovery.

¶ 45 Jurisdictional Issues

¶ 46 Supreme Court Rule 303 requires the notice of appeal to "specify the judgment or part thereof or other orders appealed from and the relief sought from the reviewing court." Ill. S. Ct. R. 303 (eff. June 4, 2008). "It is well established that an appellate court has jurisdiction only of those matters which are raised in the notice of appeal. [Citation.]." *Illinois Health Maintenance Organization Guaranty Association v. Shapo*, 357 Ill. App. 3d 122, 148 (2005). This court acquires no jurisdiction to review "parts of judgments not specified or fairly inferred from the notice of appeal." *In re V.M. and M.M., Minors*, 352 Ill. App. 3d 391, 397 (2004). The notice should be "considered as a whole" and will be deemed to confer appellate jurisdiction "when it fairly and adequately sets out the judgment complained of and the relief sought, advising the successful litigant of the nature of the appeal." *Fitch v. McDermott, Will and Emery, LLP*, 401 Ill. App. 3d 1006, 1014 (2010).

¶ 47 Brompton's notice of appeal specifies only part of the judgment: the trial court's ruling

that Diana Z.'s posting does not meet the criteria for defamatory material pursuant to the *Stone* holding. The notice of appeal does not make any reference to the tortious interference claim. If Brompton had referred to the dismissal of its petition for pre-suit discovery in the notice of appeal, we believe it could be reasonably inferred that Brompton was preserving its appeal as to both the defamation and the tortious interference counts, particularly in light of the trial court's silence regarding the latter in its order.

¶ 48 We recognize that courts liberally construe a notice of appeal absent prejudice to the litigants and that deficiencies of form rather than substance are not fatal when the appellee is not prejudiced. *Fitch*, 401 Ill. App. 3d at 1014. However, we do not view the absence a reference to the tortious interference count – or more generically, to the trial court's dismissal of the petition – as a mere deficiency of form. Furthermore, regardless of Yelp's apparent non-participation in this case at the trial court or appellate level, Brompton's limitation of its notice of appeal to the defamation count did not fully advise Yelp of the nature of Brompton's appeal.

¶ 49 In summary, this court is not vested with jurisdiction to consider Brompton's tortious interference claim in light of Brompton's limitation of the notice of appeal to the trial court's ruling regarding Brompton's defamation count.

¶ 50 CONCLUSION

¶ 51 The trial court did not err in finding that Diana Z's comments did not "meet the criteria of defamatory material." Diana Z.'s comments constituted opinion and not fact. Even assuming *arguendo* that the comments constituted fact, any allegedly defamatory statements may not be reasonably read to refer to Brompton, as opposed to Beal. This courts lacks jurisdiction to

consider Brompton's tortious interference with prospective economic relations count in the verified petition where the notice of appeal referenced only the disposition of the defamation claim.

¶ 52 In conclusion, the trial court did not err in dismissing Brompton's verified petition for discovery before suit pursuant to Supreme Court Rule 224. The decision of the trial court is affirmed.

¶ 53 Affirmed.